

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP No.2233 of 2016

Date of Decision : 05.09.2019

Manager, M/s QRT 24 x 7 Security Pvt. Ltd.

....Petitioner

v/s

Presiding Officer, Industrial Tribunal-cum-Labour Court-I,
Gurgaon, Haryana and another

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Tribhavan Dahiya, Advocate for the petitioner.

None for respondent No.2 Workman.

B.S. Walia, J. (Oral)

[1] Sole argument of learned counsel for the petitioner is that the impugned order dismissing the application for setting aside ex parte award is legally sustainable in the light of decision of Hon'ble the Supreme Court in *M/s Haryana Suraj Malting Limited* versus *Phool Chand*, 2018(16) SCC 567.

[2] Learned counsel contends that the impugned order Annexure P/8 dated 28.03.2014, to the extent of dismissing the application on the ground that the Tribunal had become *functus officio* is liable to be set aside and the matter remanded to the learned Tribunal to decide the application for setting aside ex parte award afresh in accordance with law in the light of the aforementioned decision of Hon'ble the Supreme Court.

[3] I have considered the submission of learned counsel for the petitioner as well as the decision of Hon'ble the Supreme Court in Phool

“35. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the [Industrial Disputes Act, 1947](#) is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent.”

[4] A perusal of the aforementioned decision reveals that the Tribunal is not *functus officio* after the award has become enforceable as far as prayer for setting aside of ex parte award is concerned and it is within the powers of the Tribunal to entertain an application as per the scheme of the Act as well as rules of natural justice especially in view of the Industrial Disputes Act, 1947 being a welfare legislation intended to maintain industrial peace.

[5] In the light of the position as noted above, impugned order Annexure P/8 dated 28.03.2014 to the extent it dismisses the application for setting aside exparte award on ground of the Tribunal having become *functus officio* is set aside and the matter remanded to the Tribunal to decide the application for setting aside the ex parte award in accordance with law after giving reasonable opportunity to the parties to put forth their respective stand qua the application for setting aside the ex parte award.

(B.S. Walia)
Judge

September 05, 2019
'Rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No